

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

August 27, 1997

UNITED STATES OF AMERICA	)	
Complainant,	)	
	)	8 U.S.C. § 1324a Proceeding
v.	)	
	)	OCAHO Case No. 96A00019
SUNSHINE BUILDING MAINTENANCE, INC.	)	
Respondent.	)	

PARTIAL SUMMARY DECISION AND PREHEARING ORDER

This case arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a (INA). INS filed its Second Amended Complaint on March 10, 1997 consisting of six counts; an Answer was filed on March 17, 1997 responding to the allegations and raising certain affirmative defenses. Presently pending are complainant's motions for summary decision, and for a protective order. Pursuant to agreements made at a case management conference held on August 4, 1994, the parties have submitted their proposed stipulations of fact and joint motion regarding remaining issues for the hearing in this matter which is set to commence on October 6, 1997 at 9:30 a.m. (MST) at

NLRB Room 700  
North Tower Dominion Plaza  
600 17th Street  
Denver, Colorado 80202-5433.

I. STIPULATIONS

For the purposes of this action only, the following stipulations entered by the parties are conclusively established:

1. Respondent, Sunshine Building Maintenance, Inc., is a corporation operating under the laws of the State of Colorado with its primary place of business at 7717 West 6th Avenue, Unit C, Lakewood, Colorado 80215.
2. Respondent is authorized to conduct its business in the State of Colorado and has done so for all times relevant to this matter.
3. Respondent, Sunshine Building Maintenance, Inc., hired the following individuals for

employment in the United States after November 6, 1986:

Count I:

1. Andres Torres
2. Armando Escobedo
3. Martina Herrera
4. Joel Lambar
5. Ivone Silva a.k.a. Neove Silva
6. Mayela Ramirez

Count II:

1. Tomas Valadez

Count III:

1. Teddi Jo Samano Cordova
2. Herbert Phillips
3. Leobardo Duarte
4. Maria Garcia a.k.a. Maria Eligia Garcia
5. Maria Garcia Munoz
6. Charles G. Maestas
7. Raul Humberto Ovalle
8. Victor Hernandez

Count IV:

1. Renee Chavez
2. Tina Garcia
3. Pilar Flores

Count V:

1. Della Torres

Count VI:

1. Daroly Arenas Silva aka Daroly Arenas
2. Lucia Estrella Velasquez
3. Guadalupe Rodriguez Diaz
4. Pedro Antonio Herrera Olaque aka Pedro O. Herrera

5. Claudia Mendez Beltran aka Claudia Mendez
  6. Rafael Perez Gonzalez
  7. Alfredo Ramirez Madrigal
  8. Maria Esperanza Ramirez Madrigal aka Esperanza Ramirez
  9. Angeles Solis Cortez
  10. Arturo Villegas Castaneda aka Arturo Villegas
  11. Juan Picazo Herrera aka Cesar Hernandez
  12. Victor Hernandez Picazo
  13. Carlos Arenas Avila
  14. Hugo Arturo Villegas Corral
  15. Omar Rodriguez Velasquez
  16. Tomas Hernandez Picaso
  17. Isabel Arenas Salazar
  18. Octavio Murillo Hernandez
  19. Rosalia Jimenez Diaz
  20. Doris de Erazo
  21. Eumelia Ramirez Madrigal
  22. Natalia Montiel de Alvarado
  23. Ernesto Garcia Carbajal
  24. Carlos Jesus Bernal Alvarado
4. On or about April 3, 1995 respondent was served with a subpoena commanding it to produce for inspection all Forms I-9 for its current employees.
  5. On or about July 24, 1995, respondent was served with a subpoena commanding it to produce for inspection all Forms I-9 for its current employees.
  6. Pursuant to subpoenas served on respondent on April 3 and July 24 of 1995, respondent produced for inspection Forms I-9 for the following individuals:
    1. Andres Torres
    2. Armando Escobedo
    3. Martina Herrera
    4. Joel Lambar
    5. Ivone Silva aka Neove Silva
    6. Mayela Ramirez
    7. Tomas Valadez (sic)
    8. Teddi Jo Samano Cordova
    9. Herbert Phillips
    10. Leobardo Duarte
    11. Maria Garcia aka Maria Eligia Garcia
    12. Maria Garcia Munoz
    13. Charles G. Maestas

14. Raul Humberto Ovalle
  15. Victor Hernandez
  16. Della Torres
  17. Daroly Arenas Silva aka Daroly Arenas
  18. Lucia Estrella Velasquez
  19. Guadalupe Rodriguez Diaz
  20. Pedro Antonio Herrera Olaque aka Pedro O. Herrera
  21. Claudia Mendez Beltran aka Claudia Mendez
  22. Rafael Perez Gonzalez
  23. Alfredo Ramirez Madrigal
  24. Maria Esperanza Ramirez Madrigal aka Esperanza Ramirez
  25. Arturo Villegas Castaneda aka Arturo Villegas
  26. Juan Picazo Herrera aka Cesar Hernandez
  27. Hugo Arturo Villegas Corral
  28. Isabel Arenas Salazar
  29. Rosalia Jimenez Diaz
  30. Doris de Erazo
  31. Eumelia Ramirez Madrigal
  32. Natalia Montiel de Alvarado
  33. Ernesto Garcia Carbajal
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7. Maria Garcia aka Maria Eligia Garcia, identified in Count III of the complaint, is the same Maria Eligia Garcia whose Form I-9 was recovered from the respondent's records.
  8. Daroly Arenas Silva aka Daroly Arenas, identified in Count VI of the complaint, is the same Daroly Arenas whose Form I-9 was recovered from the respondent's records.
  9. Pedro Antonio Herrera Olaque aka Pedro O. Herrera identified in Count VI of the complaint, is the same Pedro O. Herrera whose Form I-9 was recovered from the respondent's records.
  10. Maria Esperanza Ramirez Madrigal aka Esperanza Ramirez, identified in Count VI of the complaint, is the same Maria Esperanza Ramirez whose Form I-9 was recovered from the respondent's records.
  11. Arturo Villegas Castaneda aka Arturo Villegas, identified in Count VI of the complaint, is the same Arturo Villegas whose Form I-9 was recovered from the respondent's records.
  12. Eumelia Ramirez Madrigal, identified in Count VI of the complaint, is the same Melis (sic) Madrigal whose Form I-9 was recovered from the respondent's records.

13. Claudia Mendez Beltran aka Claudia Mendez, identified in Count VI of the complaint, is the same Claudia Mendez whose Form I-9 was recovered from the respondent's records.
14. Isabel Arenas Salazar, identified in Count VI of the complaint, is the same Isabel Arenas whose Form I-9 was recovered from the respondent's records.
15. Doris de Erazo, identified in Count VI of the complaint, is the same Doris Aguirre whose Form I-9 was recovered from the respondent's records.
16. Natalia Montiel de Alvarado, identified in Count VI of the complaint, is the same Natalia Montiel whose Form I-9 was recovered from the respondent's records.
17. Carlos Jesus Bernal Alvarado, identified in Count VI of the complaint, is the same Carlos Jesus Bernal A. whose Form I-9 was recovered from the respondent's records.
18. Octavio Murillo Hernandez, identified in Count VI of the complaint, is the same Octavio Murillo, hired by respondent on July 5, 1994.
19. Forms I-9 for the following individuals, identified in Count I of the complaint were not properly completed, to wit:
 

Andres Torres	Part I not signed by employee
Armando Escobedo	Attestation box not completed
Martina Herrera	Part 1 not completed two months after hire
Joel Lambar	Part 1 not dated and failure to state alien registration number in attestation box.
Ivone Silva aka Neove Silva	Attestation box not completed
Mayela Ramirez	Failure to state alien registration number in the attestation box.
20. Respondent failed to properly complete Part 2 of the Form I-9 for Tomas Valadez, identified in Count II of the complaint, in that respondent failed to identify in the Form I-9 a document showing employment eligibility and failed to sign Part 2 of the Form I-9.
21. Forms I-9 for the following individuals, identified in Count III of the complaint, were not prepared by the respondent within three (3) business days of hire, to wit:
  1. Teddi Jo Samano Cordova 8 days after hire

- |   |                    |
|---|--------------------|
| 2. Herbert Phillips                     | 10 days after hire |
| 3. Leobardo Duarte                      | 7 days after hire  |
| 4. Maria Garcia aka Maria Eligia Garcia | 13 days after hire |
| 5. Maria Garcia Munoz                   | 9 days after hire  |
| 6. Charles G. Maestas                   | 8 days after hire  |
| 7. Raul Humberto Ovalle                 | 4 days after hire  |
| 8. Victor Hernandez                     | 6 days after hire  |
22. Respondent failed to produce for inspection, as requested pursuant to subpoenas of April 3 and July 24, 1995, Forms I-9 for the following individuals, identified in Count IV of the complaint:
    1. Renee Chavez
    2. Tina Garcia
    3. Pilar Flores
  23. Respondent produced to the complainant copies of the Forms I-9 for Renee Chavez, Tina Garcia, and Pilar Flores on June 28, 1996.
  24. Form I-9 for Della Torres, identified in Count V of the complaint, was not properly completed in that Part 1 was not signed and it was not completed within three (3) business days of hire.
  25. Failure of the employer to ensure that the employee properly completed Part 1 of the Form I-9 constitutes a violation of 8 U.S.C. § 1324a(b)(2) and 8 C.F.R. § 274a.2(b)(1)(i).
  26. Failure of the Employer to properly complete Part 2 of the Form I-9 constitutes a separate violation of 8 U.S.C. § 1324a(b)(1) and 8 C.F.R. § 274a.2(b)(1)(ii).
  27. Failure to prepare the Form I-9 within three business days of hire of the employee constitutes a separate violation of 8 U.S.C. § 1324a(b)(1) and 8 C.F.R. 274a.2(b)(1)(ii).
  28. Failure of the employer to produce for inspection Forms I-9 when requested by the Immigration and Naturalization Service constitutes a separate violation of 8 U.S.C. § 1324a(b)(3) and 8 C.F.R. 274a.2(b)(2)(ii).
  29. Complainant has no record of previous violations of the employer requirements of section 274A of the Act regarding Sunshine Building Maintenance, Inc.
  30. Respondent had about 350 employees at the time the INS conducted the Employer

Sanctions Operation over the Cherry Creek Schools on July 20, 1995.

31. When the respondent met with INS-SA Michael Wheeler on July 28, 1995 it requested assistance in determining whether or not potential employees were eligible for employment.
32. On July 20, 1995 Miguel Velasquez Rodriguez stated to INS-SA Michael Wheeler that he was at the Smoky Hills High School attempting to get a job with the respondent.
33. On July 20, 1995 Tomas Hernandez Picazo stated to INS-SA Michael Coyle that he had been employed by the respondent for two days.
34. On July 20, 1995 Victor Hernandez Picazo stated to INS-SA Anthony Rouco that he had been employed by the respondent for two days.
35. On July 20, 1995 Angeles Solis Cortez stated to an INS Deportation officer that she commenced her employment with the respondent on July 17, 1995.
36. On July 20, 1995 Omar Rodriguez Velasquez stated to INS-SA Shawn McCoy that he commenced his employment with the respondent on that day and had been working at the Cherry Creek Schools for one hour before he was arrested by immigration officers.
37. On July 20, 1995, Carlos Arenas Avila stated to INS-SA Francis A. Lee that he commenced his employment with the respondent on July 19, 1995.
38. On or about January 5, 1996, a Notice of Intent to Fine was served on the respondent, Sunshine Building Maintenance, Inc., by certified mail, Postal Form P 884 384 612.

## II. PARTIAL SUMMARY DECISION

On the basis of the stipulations, it appears that Sunshine has admitted to the factual allegations in Counts I, II, III, and V, and Count IV as they relate to Renee Chavez, Tina Garcia, and Pilar Flores. Accordingly, INS is entitled to summary decision as follows:

### Findings of Fact

1. Sunshine Building Maintenance, Inc. is a Colorado corporation having its principal place of business at 7717 W. 6th Avenue, Unit C, Lakewood, Colorado 80215
2. A Notice of Intent to Fine was served upon the respondent on or about January 5, 1996.

3. Respondent hired the following six individuals for employment in the United States after November 6, 1986, and failed to ensure that they completed Section 1 of Form I-9 (Employment Eligibility Verification Form) properly: Andres Torres, Armando Escobedo, Martina Herrera, Joel Lambar, Ivone Silva a.k.a. Neove Silva, and Mayela Ramirez.
4. Respondent hired Tomas Valadez for employment in the United States on or about June 19, 1995 failed to complete Form I-9 for him properly.
5. Respondent hired the following eight individuals for employment in the United States after November 6, 1986 for whom it failed to complete Form I-9 within three days of their hire: Teddi Jo Samano Cordova, Herbert Phillips, Leobardo Duarte, Maria Garcia a.k.a. Maria Eligia Garcia, Maria Garcia Munoz, Charles G. Maestas, Raul Humberto Ovalle, and Victor Hernandez.
6. Respondent hired the following three individuals for employment in the United States after November 6, 1986 for whom it failed to make an I-9 Form available for inspection in response to subpoenas dated April 3 and July 24, 1995 but did produce copies on July 28, 1996: Renee Chavez, Tina Garcia, and Pilar Flores.
7. Respondent hired Della Torres for employment in the United States on or about May 7, 1995 and failed to complete Section 2 of Form I-9 within three business days of hire, and also failed to ensure that she completed Section 1 of the Form I-9 properly.
8. Respondent hired the following individuals named in Count VI for employment in the United States after November 6, 1986:
  1. Daroly Arenas Silva aka Daroly Arenas
  2. Lucia Estrella Velasquez
  3. Guadalupe Rodriguez Diaz
  4. Pedro Antonio Herrera Olaque aka Pedro O. Herrera
  5. Claudia Mendez Beltran aka Claudia Mendez
  6. Rafael Perez Gonzalez
  7. Alfredo Ramirez Madrigal
  8. Maria Esperanza Ramirez Madrigal aka Esperanza Ramirez
  9. Angeles Solis Cortez
  10. Arturo Villegas Castaneda aka Arturo Villegas
  11. Juan Picazo Herrera aka Cesar Hernandez
  12. Victor Hernandez Picazo
  13. Carlos Arenas Avila
  14. Hugo Arturo Villegas Corral
  15. Omar Rodriguez Velasquez
  16. Tomas Hernandez Picaso
  17. Isabel Arenas Salazar



18. Octavio Murillo Hernandez
19. Rosalia Jimenez Diaz
20. Doris de Erazo
21. Eumelia Ramirez Madrigal
22. Natalia Montiel de Alvarado
23. Ernesto Garcia Carbajal
24. Carlos Jesus Bernal Alvarado

### Conclusions of Law

1. All jurisdictional prerequisites for this action have been satisfied.
2. Respondent violated the Immigration and Nationality Act as amended, 8 U.S.C. § 1324a(a)(1)(B) which renders it unlawful after November 6, 1986 to hire an individual without complying with the requirements of § 1324a(b)(1)(2)(3) and 8 C.F.R. § 274a.2(b)(1)(i), (b)(1)(ii), (b)(2)(ii) in 19 separate violations as described herein.

### III. ISSUES REMAINING FOR HEARING

The parties have filed a joint motion identifying the following issues remaining for hearing:

#### Count I:

Whether Martina Herrera was an alien not authorized for employment in the United States at any time during her employment with the respondent.

#### Count II:

Whether the following individuals were aliens not authorized for employment in the United States at any time during their employment with respondent:

1. Leobardo Duarte
2. Maria Garcia Munoz
3. Victor Hernandez

#### Count IV:

Whether respondent failed to make available for inspection to officers of the Immigration and Naturalization Service the Form I-9 for Juan Picazo Herrera aka Cesar Hernandez pursuant to subpoenas served on respondent on April 3 and July 24, 1995.

Whether the following individuals were aliens not authorized for employment in the United States at any time during their employment with the respondent:

1. Juan Picazo Herrera aka Cesar Hernandez
2. Pilar Flores

Count VI:

Whether the respondent hired for employment in the United States the following individuals:

1. Mario Garcia Chavez
2. Miguel Velasquez Rodriguez

If Mario Garcia Chavez and Miguel Velasquez Rodriguez were hired by the respondent for employment in the United States, whether respondent hired them after November 6, 1986.

If Mario Garcia Chavez and Miguel Velasquez Rodriguez were hired by the respondent for employment in the United States after November 6, 1986, whether respondent had knowledge at the time it hired them that they were aliens not authorized for employment in the United States or whether respondent continued to employ them knowing that they were, or had become, unauthorized aliens with respect to such employment.

Regarding the following individuals, whether respondent had knowledge at the time it hired them that they were aliens not authorized for employment in the United States or whether respondent continued to employ them knowing that they were, or had become, unauthorized aliens with respect to such employment: Daroly Arenas Silva aka Daroly Arenas, Lucia Estrella Velasquez, Guadalupe Rodriguez Diaz, Pedro Antonio Herrera Olaque aka Pedro O. Herrera, Claudia Mendez Beltran aka Claudia Mendez, Rafael Perez Gonzalez, Alfredo Ramirez Madrigal, Maria Esperanza Ramirez Madrigal aka Esperanza Ramirez, Angeles Solis Cortez, Arturo Villegas Castaneda aka Arturo Villegas, Juan Picazo Herrera aka Cesar Hernandez, Victor Hernandez Picazo, Carlos Arenas Avila, Hugo Arturo Villegas Corral, Omar Rodriguez Velasquez, Tomas Hernandez Picaso, Isabel Arenas Salazar, Octavio Murillo Hernandez, Rosalia Jimenez Diaz, Doris de Erazo, Eumelia Ramirez Madrigal, Natalia Montiel de Alvarado, Ernesto Garcia Carbajal, and Carlos Jesus Bernal Alvarado.

Civil Money Penalty

Whether the amount of the civil money penalty assessed by the complainant for each of the violations listed in Counts I, II, III, IV, V, and VI of the complaint regarding unlawful employment is fair and adequate under the circumstances of this case.

IV. PREHEARING ORDER

Each of the parties has filed preliminary witness and exhibit lists. A short (no more than two pages) prehearing statement of the case shall be filed by complainant on or before September 15,

1997 and by respondent on or before September 26, 1997.

The parties are further advised as follows:

#### Exhibits

Counsel for the parties shall mark their proposed documentary or physical evidence in advance of the hearing, and shall provide a list containing a brief description of each item of documentary or physical proof which is to be offered in evidence. Even though an exhibit may have been marked previously with a deposition exhibit number, it must be re-marked for the hearing. Complainant's exhibits should be marked numerically and respondent's exhibits should be marked alphabetically. The lists should be exchanged between counsel at least 15 days before the hearing and opposing counsel informed as to which exhibits may be admitted without objection.

With respect to those exhibits to which there is an objection, counsel shall file appropriate memoranda citing points and authorities as to why the same should be admitted or not admitted not later than 10 days before the hearing and serve a copy on opposing counsel at the same time.

The hearing will be expedited if, in addition to the list of exhibits, copies are made for opposing counsel and a bench book of exhibits is prepared and delivered to the Administrative Law Judge at the commencement of the hearing.

#### Use of Depositions of Hearing

Any party considering the presentation of deposition testimony is instructed to consult 28 C.F.R. § 68.24 and to comply therewith. It is the intent of the Administrative Law Judge to limit the use of deposition testimony other than for impeachment purposes. If counsel believe that presentation of deposition testimony will be required (other than for impeachment), notice shall be given to opposing counsel at least 5 days prior to the hearing of what testimony it proposes to introduce so that summaries and excerpts can be stipulated to.

#### Subpoenas

Any party in need of a subpoena to compel the attendance of a witness or the production of documents should make the request not later than 15 days prior to the hearing.

#### Motion for Protective Order

Respondent shall have until September 15, 1997 to set out in motion form its detailed reasons for requesting the document authorized by the confidential informant. Absent such filing, the motion for protective order will be granted.

SO ORDERED.

Dated and entered this 27th day of August, 1997.

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Ellen K. Thomas  
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of August, 1997, I have served copies of the foregoing Partial Summary Decision and Prehearing Order on the following persons at the addresses indicated:

Dea Carpenter, Esquire  
Associate General Counsel  
Immigration and Naturalization Service  
425 "I" Street, N.W., Room 6100  
Washington, D.C. 20536

Leila Cronfel, Esquire  
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Cynthia A. Castañeda  
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